



FILED
DISTRICT COURT OF GUAM

AUG 10 2009 (W)

JEANNE G. QUINATA
CLERK OF COURT

Office of the Attorney General

Alicia G. Limtiaco

Attorney General of Guam

Civil Division

287 West O'Brien Drive

Hagåtña, Guam 96910 • USA

• (671) 475-3324 (Fax) • (671) 472-2493 (Fax)

Attorneys for the Government of Guam

**IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM**

Pursuant to Fed.R.Civ.P. 12(b)(4) and (5), defendant **Guam Public School System** (GPSS)* moves the court to dismiss this action on the grounds of insufficiency of process and service of process.

1. This action was commenced on May 15, 2009 by the filing of a "Complaint for Damages under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, and the

111

* The Guam Public School System has recently been re-renamed the Department of Education. See P.L. 30-50 (July 14, 2009).

Seleen vs GPSS

District Court of Guam – Case No. 09-00010

1 Rehabilitation Act of 1973," together with a demand for jury trial, against the Guam Public
2 School System, Government of Guam.

3 2. Summons issued as to the Guam Public School System on May 20, 2009. On June
4 25, 2009, the summons was returned executed, and reflects that it was served at the office of
5 the superintendent of the Guam Public School System on June 10, 2009, with an answer due
6 August 10, 2009.

7 3. The Organic Act of Guam provides, "The relations between the courts established by
8 the Constitution or laws of the United States and the local courts of Guam with respect to
9 appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, *and other matters*
10 *or proceedings* shall be governed by the laws of the United States pertaining to the relations
11 between the courts of the United States, including the Supreme Court of the United States, and
12 the courts of the several States in such matters and proceedings." 48 U.S.C. § 1424-2
13 (emphasis added). By virtue of the Organic Act then, the rules governing service of process
14 applicable to states and municipal corporations or other state-created governmental
15 organizations that are subject to suit in the federal courts apply to Guam in the same manner as
16 if Guam were a state.

17 4. The Federal Rules of Civil Procedure provide that service of a summons and
18 complaint upon a "state, a municipal corporation, or any other state-created governmental
19 organization *that is subject to suit* must be served by: (A) delivering a copy of the summons
20 and of the complaint to its chief executive officer; or (B) serving a copy of each in the manner
21 prescribed by that state's law for serving a summons or like process on such a defendant."
22 Fed.R.Civ.P. 4(j)(2) (emphasis added). The Guam Public School System is not authorized to
23

24 *Seleen v. Guam Public School System*
25 Case No. 09-CV-00010 (District Court of Guam)

1 sue and be sued in its own name. Stated differently, GPSS is not subject to suit in its own
2 name, but only as may be authorized under Guam law. Therefore, sub-paragraph (A) of
3 Fed.R.Civ.P. 4(j)(2) does not apply and GPSS may only be sued as provided in sub-paragraph
4 (B). Under Guam law, in order to sue GPSS, the plaintiff must properly serve the government
5 of Guam.

6 5. Rule 4(i) of the Guam Rules of Civil Procedure, provides:

7 (1) Service upon the government of Guam shall be effected:

8 (A) by delivering a copy of the summons and of the complaint to
9 the Attorney General or to an assistant attorney general or clerical
10 employee designated by the Attorney General in a writing filed by the clerk
11 of court or by sending a copy of the summons and of the complaint by
registered or certified mail addressed to the office of the Attorney General;
and

12 (B) in any action attacking the validity of an order of an officer or
13 agency of the government of Guam not made a party, by also sending a
copy of the summons and of the complaint by registered or certified mail to
the officer or agency.

14 (2) (A) Service on an agency or corporation of the government of
15 Guam, or an officer or employee of the government of Guam sued only in
16 an official capacity, is effected by serving the government of Guam in the
manner prescribed by Rule 4(i)(1) and by also sending a copy of the
17 summons and complaint by registered or certified mail to the officer,
employee, agency, or corporation.

18 6. The Guam Public School System is an agency and instrumentality of the government
19 of Guam. *See* 48 U.S.C. § 1421g(b) (“The Government of Guam shall provide an adequate
20 public educational system of Guam, and to that end shall establish, maintain, and operate
21 public schools according to the laws of Guam.”); *and see* 5 GCA § 3107 “There is within the
22 Executive Branch of the government of Guam a Guam Public School System.”). As such,
23 G.R.Civ.P. 4(i) requires that in order to effectuate service of process upon an agency and

instrumentality of the government of Guam, both GPSS and the Attorney General must be served.

7. There has been no service of process of the complaint by the plaintiff upon the Attorney General of Guam. An order dismissing the complaint is therefore due to be entered upon the expiration of 120 from the date of filing of the complaint. *See Fed.R.Civ.P. 4(m)* ("If a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time.").

WHEREFORE, defendant Government of Guam, Guam Public School System, moves the court to dismiss the complaint for insufficiency of service of process upon the expiration of 120 from the date of filing of the complaint.

The Government of Guam, Guam Public School System, further moves the court for an order vacating any previously ordered timeline(s) and scheduling conference(s), and directing that they be rescheduled upon proper service of process upon the Attorney General of Guam.

Respectfully submitted this 10th day of August, 2009.

Office of the Attorney General
Alicia G. Limtiaco, Attorney General

Pat Mason
J. PATRICK MASON
Deputy Attorney General

Seleen v. Guam Public School System
Case No. 09-CV-00010 (District Court of Guam)